

IN SENATE OF THE UNITED STATES.

MAY 4, 1836.

Ordered, That the following report be reprinted, to accompany bill S. 226.

APRIL 11, 1834.—Mr. BIBB made the following report, which was read, and ordered to be printed :

The Committee on Naval Affairs, to whom was referred the petition of Andrew Armstrong, respectfully report :

That the petitioner was, on the 24th of April, 1828, commissioned, by and with the advice and consent of the Senate, navy agent for the port of Lima, in Peru, South America, for the term of four years. In the face of the commission he was required to observe and follow the orders and directions which he should, from time to time, receive from the President of the United States and the Secretary of the Navy. His general instructions were to furnish supplies of stores and money to the commanders of our vessels of war when called for, for which he was authorized to draw bills on the Navy Department. Very properly, his instructions reminded him that the distance of his station from the United States, and the nature of the service, rendered it necessary that he should rely much upon his own resources, discretion, and judgment.

He departed from the United States in the beginning of the year 1829, arrived at Lima on the 26th of June, was then and there accredited as the agent of the United States, and entered upon the duties of his office.

By a letter, dated at Washington on the 5th of April, 1830, his commission was revoked. Ninety days were assumed as the time when notice of such revocation would be communicated at Lima ; but the notice was not in fact there received until the 20th of October, 1830. Acting upon the hypothesis that notice would have been received at Lima on the 4th of July, bills drawn between that day and the actual notice of revocation for supplies to our vessels of war at that station, were protested at the Navy Department for non-acceptance and non-payment, because drawn after the supposed notice of revocation, although drawn in pursuance of the general instructions and authority to Mr. Armstrong, and before notice of the revocation of his commission.

Of this class, two bills—the one for \$2,000, of the 13th July, 1830, in favor of Matthew Kelly ; the other for \$4,000, of the 16th August, 1830—were protested for non-acceptance and non-payment at the Navy Department, in November, 1830, and returned upon the drawer, at Lima, for payment of principal, interest, damages, and costs.

Subsequently, the Secretary of the Navy, being informed that notice of the revocation of Mr. Armstrong's agency was not received at Lima on the 4th of July, 1830, as conjectured, but was made known there on the 20th of October, determined to pay all bills drawn between those days. This

decision was communicated to Mr. Armstrong by a letter of the 12th September, 1831, which was delivered to him by his successor in agency on the 16th February, 1832.

In consequence of the protest of bills so drawn by Mr. Armstrong before notice of the revocation of his agency, he was detained in Lima until relieved by the notice of the determination of the Secretary of the Navy to pay the bills which had been so protested. He returned in a merchant vessel by the earliest conveyance after such advice, and applied for a settlement of his accounts.

By the statement of Mr. Armstrong, a balance was due him of \$4,681 74; by the settlement and adjustment made by the Fourth Auditor, a balance was made against the navy agent of \$12,875 44, as of the 11th of August, 1832; and for that sum a warrant of distress was issued from the Treasury Department.

The difference between the statement of the account by the petitioner, and that made by the Auditor, will appear by the document A 3, called "reconcilement of the account of Andrew Armstrong, late navy agent," furnished at the request of the committee, by the Secretary of the Navy, from the office of the Fourth Auditor.

The whole amount of credits allowed to navy agent by that settlement of his account, was \$4,246 70; whereof the sum, \$2,500, was allowed for clerk hire, office rent, and stationary, during his agency from 1st July to 30th September, 1830, fifteen months, although he produced vouchers showing his expenditures for those objects, for the same time, amount to \$2,768 75, and for keeping of a horse, necessary to the business of the agency, \$360. These two sums, deducted from the whole credit, left for compensation to the agent the sum of \$1,386 70, being one per cent. on \$138,669 83, raised and disbursed by the navy agent, as will at large appear by document A 1, furnished by the Secretary of the Navy to the committee. Thus it will appear that, after deducting from the sum of \$1,386 70, allowed for compensation, the sum of \$268 75 for clerk hire, office rent, and stationary not allowed, the actual compensation allowed to the navy agent was reduced to \$1,117 95 for fifteen months. All other claims of the navy agent were rejected. A settlement so glaringly erroneous was corrected in many items by the district judges of Pennsylvania, upon an injunction against the warrant of distress, as will be seen by the certificate of the judge of the allowances made by him, annexed to his decree. Since the decision of the court, the claims of the petitioner are confined principally to the questions of the commissions to be allowed him on his disbursements of moneys and stores, and the allowances for his detention in Lima by reason of the protest of the bills. These, with some few other items, were supposed not properly to belong to the powers of the court upon the hearing of the injunction.

The petitioner claimed a commission of five per cent. on all stores, moneys, and supplies, by him issued to our vessels of war. The Auditor has allowed but one per cent., and even that per centage is denied as to parts of the transactions of the navy agent. The Auditor supposed that the act of Congress of the 3d of March, 1809, applied and limited the allowance of one per cent. to all navy agents at home and in foreign countries.

Your committee is of opinion that the allowance of one per cent. declared by the act of Congress does not apply to any navy agents except such as are stationed within the United States. The fourth and fifth sections of the

act cannot apply with any propriety to the conduct and duties of navy agents in foreign countries. To navy agents at home, the commission of one per cent. on purchases and disbursements, in connexion with the other facilities, allowances, assistants, and diminished responsibility and labor, may be a reasonable and adequate compensation. But such a commission to navy agents abroad, who are to raise money, and purchase supplies upon their own judgment, responsibility, and risk of inspection, quality, and quantity, in the purchase and issue of commodities, would fall far short of compensation adequate to the employment of skilful and trustworthy agents. The allowances made to the predecessor of Mr. Armstrong; the inducements held out to him by the *acting Secretary*, before he sailed from the United States; the allowances to the person who succeeded him in the agency; the allowances made to navy agents at other foreign stations; the rules for regulating the civil administration of the naval service, published in March, 1832, by the Secretary of the Navy, (p. 16, 17, 18, &c.;) all conduce to show that the commission of one per cent. is not applied as a limitation of the compensations to navy agents at foreign stations.

It appears, by the evidence furnished, that a commission of one per cent. at Lima, would fall far short of a reasonable compensation for the duties performed by the petitioner, under his instructions; and it appears that a commission of five per cent. accords with the mercantile usage there for similar services performed by agents for other nations, and for individuals.

Your committee, therefore, is of opinion that the allowance of a commission of five per cent. is reasonable, and that this commission be extended to all moneys, supplies, and stores, purchased and distributed by Mr. Armstrong; and also to supplies sent out by the Government, and by the navy agent received, stored, and delivered over, as the exigencies of the naval service required.

The damages upon the protest of the bill paid by Mr. Armstrong to Alsop & Co., ought to have been allowed him, the reason of the Secretary of the Navy for suffering the protest being wholly insufficient.

A reasonable compensation is justly due to the petitioner for expenses and detention at Lima, from the revocation of his appointment until he was released by the notice given at Lima of the determination of the Secretary of the Navy to pay the bills drawn before notice of the revocation of Mr. Armstrong's agency; and, from the evidence, the compensation claimed by him in his account rendered, appears but reasonable, for detention expenses, harassment, and loss of employment for sixteen months in the port of Lima.

Without entering into a tedious detail of the evidence before the court upon the bill of injunction against the warrant of distress, and the other evidence furnished to the committee, we are of opinion that the account and statement showing a balance in favor of the petitioner of \$4,681 74, on the 11th August, 1832, as per document received from the Secretary of the Navy, (marked A 3,) ought to be allowed.

It is proper to remark that some of the items disallowed by the Auditor were allowed by the district judge, and a perpetual injunction decreed *pro tanto*; and it appears that no new adjustment or further credit has been allowed to Mr. Armstrong at the Department since the settlement of the 11th August, 1832. If, however, any part of the balance so erroneously stated and prosecuted against him has been received or coerced by the warrant of distress, the amount so made ought to be returned to Mr. Armstrong.

The committee report herewith a bill for his relief.

RECONCILEMENT OF THE ACCOUNT OF ANDREW ARMSTRONG, LATE NAVY AGENT.

Statement showing the difference between accounts as settled at the Navy Department, and the account of A. Armstrong as claimed.

		Balance due United States per office statement, -	-	\$12,875 44
		Balance due agent per his account current, -	-	4,681 74
		Difference between office statement and account current, which consists of the following items :		<u>\$17,557 18</u>
		5 per cent. commission for disbursements disallowed.		
Abst. B.	1	Vincennes, - -	\$1,202 96	
"	"	Guerriere, - -	1,119 36	
"	"	Dolphin, - -	210 91	
"	"	St. Louis, - -	123 21	
"	2	Guerriere, - -	764 89	
"	"	St. Louis, - -	476 11	
"	"	Dolphin, - -	99 42	
"	3	Dolphin, - -	470 02	
"	"	St. Louis, - -	220 37	
"	4	Dolphin, - -	320 79	
"	"	Guerriere, - -	54 37	
"	"	St. Louis, - -	7 80	
"	5	Guerriere, - -	778 92	
"	"	St. Louis, - -	607 01	
H.	1	Navy tobacco, - -	260 60	
G.	1	Contingent expenses, -	70 24	
"	25	Do. - -	113 35	
"	29	Do. - -	76 12	
E.	49	Do. - -	4 00	
B.	5	Dolphin, - -	66 92	
			<u>7,047 07</u>	
		Less one per cent. commission on \$128,750 66, the amount of expenditures allowed per statement No. 2643, - -	1,287 50	
		Less also this sum, paid for hire of		

STATEMENT—Continued.

	clerk, as suspended in previous settle- ment but allow- ed per statement No. 2739, - - \$4 00	
	Less also this sum, being the amount of commission at 1 per cent., allowed in this statement, 99 19	
		1,390 70
		5,656 67
†	Add 5 per cent. commission on distribution of stores ; bills 17 and 18 not allowed	616 23
	Add 5 per cent. commission on £80 paid Mid. Hen- derson, not allowed, -	4 00
	Paid H. McCulloch for tobacco, \$5,212 16	
	Less credited by D. Walker, purser, 932 48	
		4,279 68
	Add cl'k hire, &c. not allow'd	268 75
	Add damages and interest p'd Alsop & Co., for bill pro- tested for non-acceptance,	863 33
†	Add 5 per cent commission on distribution of stores,	427 76
	Add expenses for board at Lima from first October, 1830, to 20th of January, 1832, not allowed, -	1,609 87
	Add compensation for the above time at the rate al- lowed successor, \$2,500 per annum, not allowed,	3,229 15
	Add amount of passage home, not allowed, - -	350 00
	Add travelling expenses from Philadelphia and back, not allowed, - - -	15 00
	Add detention while settling accounts, not allowed, -	28 50
	Add commissions on stores delivered Philo White, not allowed, - -	183 24

STATEMENT—Continued.

	Add to this sum, being the amount of disbursements on shipping 15 kegs of tobacco sold to Dudley Walker, purser of the St. Louis, per voucher No. 43, a copy of which is filed herewith,	25 00	\$17,557 18
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Items marked thus * allowed by judge. On those marked thus † judge allowed one per cent. for commission, viz: * allowed \$4,279 68 for tobacco; * clerk hire \$268 75; † commission \$208 80, one per cent. on distributions rejected by Auditor.

AMOS KENDALL.

TREASURY DEPARTMENT,

Fourth Auditor's office, 11th August, 1832.

